

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 624 of 1996

in

SPECIAL CIVIL APPLICATION NO. 3767 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

and

Hon'ble MR.JUSTICE R.K.ABICHANDANI

and

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?

4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

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UNION OF INDIA

Versus

SHAKIL AHMED ABDUL MUTTALIB

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Appearance:

MR ANANT DAVE, ADDL. CENTRAL GOVT. COUNSEL for Appellant

MR KR JANI for Respondent No. 1

MR KT DAVE, ASST. GOVT. PLEADER for Respondent No. 2, 3, 4

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CORAM : MR.JUSTICE B.C.PATEL

and

MR.JUSTICE R.K.ABICHANDANI

and

MR.JUSTICE M.R.CALLA

Date of decision: 31/03/2000

ORAL JUDGEMENT (Per Patel, J.)

In view of the order made by the Division Bench on 30.9.1996, the appeal was placed before the Honourable the Chief Justice for placing for final hearing and as per the order passed by the Honourable the Chief Justice, this matter is placed before this Bench.

2. An order of detention was made by the Additional Chief Secretary to the Government, Home Department, Sachivalaya, Gandhinagar on August 17, 1994 on being satisfied that the detenu is required to be detained under section 3 (1) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (hereinafter referred to as the Act). A declaration under section 9(1) of the Act was made by the Additional Secretary to the Government of India on September 21, 1994 informing the detenu that he has a right to represent to the Central Government as well as to the Advisory Board against the declaration in the manner specified in the grounds of detention. The petitioner challenged the order of detention by filing Spl. C.A. No. 3767 of 1995 which was heard by the learned Single Judge on 8.5.1996. It was submitted before the learned Single Judge that the authority making a declaration under section 9 (1) of the Act ought to have informed the detenu about his right to make a representation and the name of the authority to whom the representation is to be made. It was contended before the learned Single Judge that as the declaring authority has not informed the detenu about his right to make a representation to the Declaring Officer, right guaranteed under Article 22 (5) of the Constitution of India is infringed. Therefore, it was submitted that the continued detention is vitiated.

3. Learned Single Judge considering the fact that the declaration was made by Additional Secretary to the Government of India and in the order, no such intimation was made, allowed the petition. Learned counsel appearing for the petitioner before the learned Single Judge drew the attention of the Court to the decision of the Honourable Apex Court in the case of KAMLESHKUMAR ISHWARDAS PATEL vs. UNION OF INDIA & ORS. reported in (1995) 4 SCC 51 in support of his contention that the authority making a declaration under section 9 (1) of the Act ought to have intimated the detenu that he has a

right to make a representation to the authority making a declaration.

4. Learned Single Judge allowed the petition and held that the continued detention is vitiated as the detenu was not informed about his right to make a representation to the declaring authority while making a declaration under section 9 (1) of the Act. It is against this order that the Union of India preferred this L.P.A. The Union of India also requested the Court to stay the order passed in Special Civil Application aforesaid by submitting a Civil Application No. 5299 of 1996. The Division Bench, by an order dated 30.9.1996 rejected the application and the Division bench also expressed a view that the matter is required to be placed before a larger Bench and that is how this matter is placed before this Bench.

5. The question before the Court was: whether it is the bounden duty of the authority making a declaration under section 9(1) of the Act to intimate the detenu about his right to make a representation to the authority making declaration?.

6. It appears that the learned counsel appearing for the Union of India placed reliance on a decision of the Division Bench of this Court in the case of SIDIQ HAJI ISMAIL vs. STATE OF GUJARAT AND ORS reported in 1989 (2) GLH 473. In the case of Sidiq Haji, Division Bench of this Court held in paragraph 22 as under :-

"22. The aforesaid discussion makes it abundantly clear that the order of detention is one and the same, in both the cases where the declaration under Section 9(1) of the Act is made and in cases where such declaration is not made. In cases where declaration under Section 9(1) of the Act is not made the period of order of detention under section 3 (1) of the Act would be one year. In cases where declaration is made, period of the order of detention would be two years. Therefore, when one person is informed about his right to make representation against his detention which is pursuant to the order under Section 3(1) he is informed that he can make representation against both, i.e. against the continued detention as well as the detention which may be for a period of one year. When a person is informed that he has a right to make representation against his detention pursuant to the order under Section 3 (1) by necessary

implication it has got to be inferred that he has been informed about his right to make representation against detention as well as against continued detention."

7. The Division Bench relying on the decision of the Apex Court in the case of SATAR HABIB vs. K.S. DILIP SINHJI reported in AIR 1986 SC 418 held as under in paragraph 18 of the judgment :-

"..... Thus by necessary implication the Supreme Court has held that the aforesaid two safeguards only are required to be observed. No other safeguard as regards right to be informed about the right to make representation against the declaration u/S. 9(1) of the Act is spelt out by the Supreme Court. Had it been so, the Supreme Court would have certainly made observation to that effect. Therefore, by necessary implication it has got to be held that even the Supreme Court held that there is no such right to be informed regarding right to make representation against the declaration u/S. 9(1) of the Act as contended by the learned counsel for the petitioner-detenu".

8. The question raised by the Union of India before this Court and as argued before the Division Bench is now fully covered by the decision of the Apex Court in the case of MEENA JAYENDRA THAKUR vs. UNION OF INDIA reported in 1999 (6) SCALE 133. Before the Apex Court the question raised was as under:-

"1. While issuing the declaration under Section 9(i) of the Act by order dated 15.9.93, the detenu not having been informed of a right of representation to the authority issuing the declaration, there has been an infringement of his constitutional right under Article 22 and, therefore, the impugned order of detention is vitiated and must be set aside."

8.1 The Apex Court, after considering the provisions held as under in paragraph 8 of the judgment:-

"... When an authority issues a declaration under Section 9 (i) of the Act, the said authority has the necessary powers to revoke the declaration on a representation being made by the detenu against such declaration. Consequently, if the detenu is not intimated of his right to

make a representation to the authority issuing the declaration under Section 9(i) then certainly his valuable constitutional right gets infringed and the two decisions of the Full Bench relied upon by Mr. Kotwal fully support this contention. Mr. N.N. Goswami, learned senior counsel appearing for the Union of India fairly concedes this position."

9. The decision of Division Bench of this High Court in the case of SIDIQ HAJI ISMAIL (supra) stands impliedly overruled by the Apex Court in view of the decision in the case of MEENA JAYENDRA THAKUR vs. UNION OF INDIA reported in 1999 (6) SCALE 133, and the decision in the case of SIDIQU HAJI ISMAIL (supra) now is no longer a good law insofar as it holds that the detenu has no specific right to be informed that he has a right to make a representation to the authority making a declaration under section 9 (1) of the Act and that right to make representation under Art. 22 (5) is not affected even if he is not so informed by the author of the declaration.

10. In view of what we have stated herein, this appeal is required to be dismissed, and the same is hereby dismissed.

( B.C. PATEL, J. )

(R.K. ABICHANDANI, J.)

csm./ (M.R. CALLA, J. )